

AMENDING THE FEDERAL LAND POLICY AND
MANAGEMENT ACT OF 1976

AUGUST 1 (legislative day JULY 28), 1986.—Ordered to be printed

Mr. McCLURE, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 2091]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2091) to amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

S. 2091, as reported, would amend section 205 of the Federal Land Policy and Management Act of 1976 to provide that lands acquired in exchange for revested Oregon and California (O&C) Railroad grant lands or reconveyed Coos Bay Wagon Road grant (CBWR) lands shall be administered in accordance with the same provisions of law as govern the administration of the exchanged revested or reconveyed lands.

BACKGROUND AND NEED

S. 2091 amends provisions of the Federal Land Policy and Management Act of 1976 (FLPMA) as it relates to the revested Oregon and California Railroad grant lands and the reconveyed Coos Bay Wagon Road grant lands in Oregon. The legislation authorizes the Secretary of the Interior to manage lands received in exchange for such revested or reconveyed lands under the same laws as the lands which were conveyed out of Federal ownership.

Ever since the lands were returned to the Federal Government and particularly since the passage of the Oregon and California

Sustained Yield Act of 1937, the Department of the Interior has sought land exchanges, where desirable, as a means of blocking up these checkerboard ownerships and bettering management practices. Where mutually advantageous, exchanges between the Department of the Interior and private owners, counties, and the State were encouraged.

Under the pre-FLPMA exchange provisions, the lands acquired assumed the identity and status of the lands exchanged. However, section 705(a) of FLPMA repealed the Act of July 31, 1939 (53 Stat. 1144) which authorized the Secretary of the Interior to exchange such revested and reconveyed lands and required that the acquired lands be administered in accordance with the same provisions of law as the revested or reconveyed lands exchanged therefore. Consequently, the Department of the Interior has determined that section 206(c) of FLPMA does not give the Department of the Interior the discretionary authority to manage the acquired lands as revested Oregon and California Railroad grant lands or reconveyed Coos Bay Wagon Road grant lands, as the case may be. Lands acquired pursuant to section 205 and 206 of FLPMA simply become "public lands".

LEGISLATIVE HISTORY

S. 2091 was introduced by Senator Hatfield on February 24, 1986. The Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on the measure on March 4, 1986.

At a business meeting on July 16, 1986, the Senate Committee on Energy and Natural Resources ordered S. 2091 favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 16, 1986, by unanimous vote of a quorum present recommends that the Senate pass S. 2091.

The rollcall vote on reporting the measure was 17 yeas, 0 nays as follows:

YEAS

Mr. McClure
Mr. Hatfield*
Mr. Weicker
Mr. Domenici
Mr. Wallop
Mr. Warner
Mr. Murkowski*
Mr. Nickles
Mr. Hecht
Mr. Evans*
Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum*
Mr. Bradley*
Mr. Bingaman*
Mr. Rockefeller*

NAYS

*Indicates vote by proxy.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 22, 1986.

Hon. JAMES A. McCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2091, a bill to amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands, as ordered reported by the Senate Committee on Energy and Natural Resources, July 16, 1986.

S. 2091 would authorize the Secretary of the Interior to manage lands received in exchange for the revested Oregon and California Railroad grant lands and the reconveyed Coos Bay Wagon Road grant lands in Oregon under the same laws as the lands that were released.

Based on information from the Bureau of Land Management, CBO expects that enactment of this bill would not result in significant costs to the federal government and would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2091. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2091 as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports received by the Committee from the Department of the Interior and the Department of Agriculture setting forth executive agency recommendations relating to S. 2091 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, July 24, 1986.

Hon. JAMES A. McCLURE,
*Chairman, Committee on Energy and Natural Resources, U.S.
Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 2091, a bill "To amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands."

We strongly support enactment of S. 2091.

S. 2091 would amend section 205 of the Federal Land Policy and Management Act of 1976 (FLPMA) to provide that lands acquired in exchange for revested Oregon and California (O&C) Railroad grant lands or reconveyed Coos Bay Wagon Road (CBWR) grant lands shall be administered in accordance with the same provisions of law as govern the administration of the exchanged revested or reconveyed lands.

The Act of July 31, 1939, authorized the Secretary of the Interior to exchange revested O&C and reconveyed CBWR grant lands for private, State, or county lands either within or contiguous to the former limits of such grants, when such exchanges would consolidate Federal land holdings. The 1939 Act required the Secretary to administer all lands and timber acquired by such exchange in accordance with the same provisions of law as the revested or reconveyed lands exchanged therefor. The 1939 Act was repealed in 1976 by section 706(a) of FLPMA, and the exchange authority in the 1939 Act was replaced by the exchange authority in section 206 of FLPMA. The Solicitor's Office of the Department of the Interior has concluded that lands acquired under section 206 of FLPMA in exchange for O&C and CBWR grant lands become public lands subject to FLPMA and, thus, are not subject to the management laws relating to O&C and CBWR.

Under pre-FLPMA exchanges of O&C and CBWR lands, the acquired lands assumed the identity of, and were managed as, O&C and CBWR lands. Receipts from the acquired lands offset the receipts from the exchanged O&C and CBWR lands. However, since lands that the Secretary acquires by exchange under section 206 of FLPMA become public lands, the provisions of FLPMA control the disposition of revenues from the acquired lands. This significantly affects the distribution of revenues to counties. The practical effect of disposing of O&C and CBWR lands by exchange and receiving public lands in return is the virtual elimination of revenues to the counties from these lands.

Under these circumstances, exchange proposals involving O&C and CBWR lands have not been well received by local governments and the public, not because of resource management considerations, but only because of the effect that such exchanges would have on revenue distribution. S. 2091 would remove this impediment to exchanges involving these lands and would enable the Secretary of the Interior to continue to consolidate Federal land holdings and thereby provide for improved management and protection of O&C and CBWR lands.

We believe that the legislative history shows that, in repealing the 1939 Act, the Congress simply intended to consolidate in one statute the exchange authority of the Secretary of the Interior and to make it more comprehensive, and that the resulting effect on the Secretary's authority with respect to the management of O&C and CBWR lands formula was inadvertent. S. 2091 would rectify this situation and would enable a viable exchange program to go forward. Therefore we strongly support its enactment.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. STEVEN GRILES,
Assistant Secretary.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, May 15, 1986.

HON. JAMES A. McCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 2091, a bill "To amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands."

The Provisions of S. 2091 would not apply to National Forest System lands. Therefore, the Department of Agriculture defers to the Department of the Interior's views on the bill.

S. 2091 would amend sections 205 and 206 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701) which deal with acquisitions and exchanges, respectively, of public and National Forest System lands. The amendment would provide that when non-Federal land is acquired by the Secretaries of the Interior or Agriculture in exchange for revested Oregon and California Railroad grant lands or reconveyed Coos Bay Wagon Road grant lands, those lands would acquire the same status as exchanged lands. Currently, sections 205 and 206 require that non-Federal lands acquired by exchange would become public or National Forest System lands.

The Forest Service administers certain of these revested or reconveyed lands in western Oregon as National Forest lands under the provisions of the act of June 24, 1954 (68 Stat. 270). Section 1(a) of that act specifically precludes the exchange of the revested or reconveyed lands administered by the Forest Service. Thus, it is our understanding that S. 2091 would not apply to those National Forest lands in western Oregon administered under the 1954 Act.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

RICHARD E. LYNG, *Secretary.*

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2091 as ordered reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 94-579—OCT. 21, 1976

90 Stat. 2743

* * * * *

ACQUISITIONS

SEC. 205. (a) Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided*, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System.

(b) Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.

(c) **["Lands and interests"]** *Except as provided in subsection (e), lands and interests* in lands acquired by the Secretary pursuant to this section or section 206 shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to the first section of the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315) (commonly known as the "Taylor Grazing Act"), they shall become a part of that district. Lands and interests in lands acquired pursuant to this section which are within boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable thereto.

(d) Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules, and regulations applicable thereto.

(e) *Lands acquired by the Secretary pursuant to this section or section 206 in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of*

the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the re-vested or reconveyed lands exchanged for the lands acquired by the Secretary.

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MODIFYING THE BOUNDARY OF THE HUMBOLDT NATIONAL
FOREST IN THE STATE OF NEVADA, AND FOR OTHER
PURPOSES

AUGUST 1 (legislative day, JULY 28), 1986.—Ordered to be printed

Mr. McCLURE, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany H.R. 850]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 850) to modify the boundary of the Humboldt National Forest in the State of Nevada, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the act do pass.

PURPOSE OF THE MEASURE

H.R. 850, as reported, would modify the boundary of the Humboldt National Forest to add certain lands now managed by the Bureau of Land Management.

BACKGROUND AND NEED

The public lands which are the subject of this measure are located in Elko and White Pine Counties, Nevada, and lie mostly in the Ruby Valley. They are isolated from other Bureau of Land Management-administered lands in the area and are adjacent to the National Forest boundary. The principal use of the lands is for livestock grazing.

H.R. 850 extends the boundary of the Humboldt National Forest to encompass about 14,743 acres of public lands administered by the Bureau of Land Management and transfer these Federal lands to the administration of the Forest Service. The transfer would not affect the validity of or terms and conditions of any existing right-of-way, easement, lease, license, or permit on the lands to be trans-

ferred. Such authorizations would be administered by the Forest Service under their original terms until expiration. Reissuance would be subject to Forest Service regulations. The change of agency jurisdiction would not be grounds for denial of renewal or reissuance. The act also provides that the boundary of the National Forest, as modified by H.R. 850, would be considered as the boundary as of January 1, 1965, in order that the provisions of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), regarding purchase of land within the National Forest boundary, would apply.

LEGISLATIVE HISTORY

H.R. 850 was introduced by Representative Vucanovich on January 30, 1985. The House of Representatives passed the measure on December 9, 1985. On March 4, 1986, the Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on H.R. 850.

At a business meeting on July 16, 1986, the Senate Committee on Energy and Natural Resources ordered H.R. 850 favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on July 16, 1986, by unanimous vote of a quorum present recommends that the Senate pass H.R. 850.

The rollcall vote on reporting the measure was 17 yeas, 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker	
Mr. Domenici	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski*	
Mr. Nickles	
Mr. Hecht	
Mr. Evans*	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum*	
Mr. Bradley*	
Mr. Bingaman*	
Mr. Rockefeller*	

*Indicates vote by proxy.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 22, 1986.

Hon. JAMES A. McCLURE,
*Chairman, Committee on Energy and Natural Resources, U.S.
Senate, Dirksen Senate Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 850, an act to modify the boundary of the Humboldt National Forest in the State of Nevada, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources, July 1986.

H.R. 850 would transfer to the Forest Service administrative jurisdiction over approximately 14,743 acres of public lands now managed by the Bureau of Land Management, by extending the boundaries of the Humboldt National Forest to include the additional acres. Based on information from the Forest Service and the Bureau of Land Management, CBO expects that enactment of this legislation would result in no significant costs or savings to the federal government, and would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 850. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 850, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports received by the Committee from the Department of the Interior and the Department of Agriculture setting forth executive agency recommendations relating to H.R. 850 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, July 24, 1986.

Hon. JAMES A. McCLURE,
*Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 850, a bill "To modify the boundary of the Humboldt National Forest in the State of Nevada, and for other purposes."

We recommend action on H.R. 850 be deferred until consideration of the Administration's interchange proposal.

H.R. 850 would transfer from the Bureau of Land Management to the Forest Service administrative jurisdiction over approximately 14,743 acres of BLM-administered land in Elko and White Pine Counties, Nevada. The boundary of the Humboldt National Forest would be modified to include these lands.

Section 3 of the bill would provide that nothing in H.R. 850 would affect the validity of or the terms and conditions to any existing right-of-way, easement, lease, license, or permit on the transferred lands, except that they would be administered by the Forest Service. Reissuance of any authorization would be in accordance with Forest Service regulations, and the change of administrative jurisdiction over the lands could not constitute a ground for the denial of renewal or reissuance of any such authorization.

Section 4 would provide that the boundary of the Humboldt National Forest, as modified, would be treated as if it were the boundary of the Forest as of January 1, 1965, for purposes of section 7 of the Land and Water Conservation Fund Act of 1965, which concerns the allocation of Fund monies for Federal purposes.

While we have no objection to this proposed transfer, we suggest that consideration of the bill be held in abeyance pending the consideration by the Congress of the Administration's proposed interchange legislation, "The Federal Lands and Administration Act of 1986," which was transmitted to Congress on February 18, and introduced as S. 2289 on April 11. That bill would provide for a transfer of jurisdiction of Federal lands between the Bureau of Land Management and the Forest Service in order to enhance public service, improve efficiency of management of natural resources, and reduce the costs of managing Federal lands. Under the interchange proposal, the lands involved in H.R. 850 would be transferred to the Forest Service and become part of the Humboldt National Forest. Although H.R. 850 and the interchange proposal would have the same effect on the lands involved in H.R. 850, the interchange proposal would address the matter on a nation-wide basis. We look forward to working with the Congress on the interchange proposal.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. STEVEN GRILES,
Assistant Secretary.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, February 13, 1986.

Hon. JAMES A. McCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on H.R. 850, a bill "To modify the boundary of the Humboldt National Forest in the State of Nevada, and for other purposes."

The Department of Agriculture (USDA) recommends that no action be taken on H.R. 850 at this time. The Forest Service and the Bureau of Land Management, U.S. Department of the Interior (USDI) are developing a proposal to interchange about 22-25 million acres of land under their respective jurisdictions. The proposal would require legislation to implement. We expect to submit such legislation to Congress later this year.

H.R. 850 would extend the boundary of the Humboldt National Forest to encompass about 14,743 acres of public lands administered by the Bureau of Land Management, USDI, and transfer these Federal lands to the administration of the Forest Service, USDA. The transfer would not affect the validity of or terms and conditions of any existing right-of-way, easement, lease, license, or permit on the lands to be transferred. Such rights would be administered by the Forest Service under their original terms until expiration. Reissuance of the authorization would be subject to Forest Service regulations. The change of agency jurisdiction would not be grounds for denial of renewal or reissuance. The bill also provides that the boundary of the National Forest, as modified by the bill, would be considered as the boundary as of January 1, 1965, in order that the provisions of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), regarding purchase of land within the National Forest boundary, would apply.

The public lands which are the subject of this bill are located in Elko and White Pine Counties, Nevada, and lie mostly in the Ruby Valley. They are isolated from other Bureau of Land Management-administered lands in the area and are adjacent to the National Forest boundary. The principal use of the lands is for livestock grazing.

The Interchange proposal being developed by the Forest Service and the Bureau of Land Management has been the subject of considerable public discussion. The two agencies completed 30 public hearings on the proposal throughout the Nation, including three in Nevada, and concurrently conducted a public comment period.

Our original proposal, announced in January 1985, would have transferred the two National Forests in the State to the jurisdiction of the Bureau of Land Management. The comments received at the Nevada public hearings and during the comment period did not support that action. Subsequently, we have worked with interested organizations in the State, under the guidance of the Nevada congressional delegation, to reach a compromise. While full concurrence by all parties has not been reached, we expect to have that concurrence before the Interchange proposal is submitted to Congress. The proposal under discussion would retain the National

Forests in the Forest Service and interchange lands on a more local and smaller scale throughout the State. The goals of the Interchange proposal are to enhance public service, to improve administrative efficiency, and thereby reduce the costs of managing these Federal lands.

While the purpose of H.R. 850 is similar to those of our Interchange proposal, we believe that it is more appropriate to examine such opportunities on a national basis. There are many places where the two agencies share boundaries or have intermingled jurisdiction. Considering all such opportunities at one time, rather than for individual National Forests, can, we believe, maximize the benefits to be achieved through an interchange of National Forest System and public lands. By withholding action on H.R. 850 while the Interchange proposal is being readied for submission to Congress, the Committee would be able to evaluate more fully the range of opportunities for Federal lands in Nevada.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BLOCK, *Secretary.*

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the act, H.R. 850, as reported.

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